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House Bill 358 - Victim's Right - Restitution

House Judiciary Committee
February 4, 2020

Keiffer Mitchell, Chief Legislative Officer, Office of the Governor
Cara Sullivan, Deputy Legislative Officer, Office of the Governor

Chair Clippinger, Vice-Chair Atterbeary, Members of the House Judiciary Committee:

House Bill 358 would require restitution, help ensure defendants pay for the damage they cause, and make procedural changes that enhance the restitution process. Victims of crime often endure significant financial losses as a result of crime. These losses can and should be addressed through restitution made to the victim by the defendant. Restitution is a critical component of restorative justice, which proactively involves the victim and offender in repairing the harm done to the victim. Improving restitution has been a priority of the Justice Reinvestment Act.

House Bill 358 would make it mandatory for a court to order restitution unless there are extraordinary circumstances. Currently, under Criminal Procedure Article § 11-603(a), a court “may” enter a judgment of restitution. Under House Bill 358, a court “shall” enter a judgment of restitution. The legislation eliminates the requirement that a victim or the State request restitution, and allows a court to order restitution if the defendant receives notice that the court will consider the issue. This ensures that failure to request restitution will not disqualify a victim from receiving restitution provided the defendant receives adequate notice of the injuries claimed and the amount being sought. The bill makes similar changes to provisions of law dealing with the juvenile court.

House Bill 358 states that the current inability to pay restitution is not an extraordinary circumstance, so if a defendant is unable to pay restitution at the time of the order, a court would now be required to order restitution to account for potential future situations in which the defendant is able to pay restitution. However, House Bill 358 maintains protections for defendants truly unable to pay restitution by prohibiting a court from using the nonpayment of restitution as the sole basis to find the obligor in contempt of court, to revoke probation, or to find that the restitution obligor has violated a condition of release. Further, House Bill 358 codifies existing case law that states there is a constitutional requirement that, as a matter of due process, the defendant be allowed to present evidence to contest the issue of restitution.

House Bill 358 would expand the category of persons entitled to restitution to account for situations in which the victim is not the person who paid the costs resulting from the crime. For example, the bill would allow a grandparent who covers the cost of orthodontia resulting from an assault to directly seek reimbursement even though the grandparent was not listed in the charging document as a victim.

House Bill 358 would also eliminate the requirement that the damages be a direct result of the defendant's acts. The bill provides that the damages must instead be "as a result" of the crime, which would allow a broader category of damages to be compensated.

Additionally, House Bill 358 would require a defendant who challenges a restitution order to request review within 30 days. Currently, because restitution is considered to be part of a sentence, it can be challenged at any time.

Finally, House Bill 358 would require the Administrative Office of the Courts to study and the Governor's Office of Crime Prevention, Youth, and Victim Services to study and report to the Governor and General Assembly on issues relating to restitution in the new records system of the court -- the Maryland Electronic Courts (MDEC).

House Bill 358 will enhance further the ability of victims to receive restitution and begin to rebuild their lives. For these reasons, the Administration requests a favorable report on House Bill 358.